

Elizabeth L. Deeley (SBN 230798)
elizabeth.deeley@kirkland.com
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Attorneys for Defendant
ZONEPERFECT NUTRITION COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAMES COLUCCI and KIMBERLY S.
SETHAVANISH,

Plaintiffs,

vs.

ZONEPERFECT NUTRITION COMPANY,

Defendant.

) CASE NO. 11-CV-04561 SC
)
)

**STIPULATION TO EXTEND THE
TIME FOR DEFENDANT
ZONEPERFECT NUTRITION
COMPANY TO ANSWER, MOVE, OR
OTHERWISE RESPOND TO THE
COMPLAINT AND RESCHEDULE
INITIAL CASE MANAGEMENT
CONFERENCE**

1 WHEREAS, Plaintiffs filed a Complaint in the above-captioned case on or about September
2 14, 2011;

3 WHEREAS, on or about September 14, 2011 the Court entered an order setting the Case
4 Management Conference for January 3, 2012;

5 WHEREAS, the parties are privately negotiating and exploring mediation in an effort to
6 resolve the pending dispute;

7 WHEREAS, on September 30, November 2, and November 12, 2011, the parties entered into
8 stipulations to extend the time for Defendant to answer, move, or otherwise respond to Plaintiffs'
9 Complaint ("Response Date"), now required on or before January 13, 2012, in order to facilitate
10 these efforts;

11 WHEREAS, the parties agreed to exchange information on a confidential basis in order to
12 facilitate these efforts;

13 WHEREAS, on or about November 30, 2011, this case was reassigned to the Honorable
14 Samuel Conti and on December 1, 2011, and the Court entered an order rescheduling the Case
15 Management Conference for January 13, 2012;

16 WHEREAS, the parties believe that, in light of the ongoing private discussions and
17 possibility of mediation, adjourning the Defendant's Response Date until February 10, 2012 and
18 rescheduling the Case Management Conference for April 6, 2012 would facilitate the parties efforts
19 to try to resolve this action and would best conserve the resources of the parties and the Court;

20 WHEREAS, the parties anticipate that, in the event the discussions are not successful, a
21 motion by Defendant is the likely response to Plaintiffs' Complaint; and

22 WHEREAS, the parties agree that it would be most efficient and best conserve the resources
23 of the parties and the Court to conduct the Case Management Conference in connection with any
24 hearing on Defendants' motion so they have proposed both to occur on April 6, 2012;

25 IT IS HEREBY STIPULATED AND AGREED by the parties, through their counsel, that the
26 parties shall adhere to the following schedule for the briefing of Defendants' motion and the Case
27 Management Conference and related deadlines:
28

- (i) Defendant shall have until February 10, 2012 (the "Response Date") to answer, move, or otherwise respond to the Complaint;
- (ii) Plaintiff's Opposition to Defendant's Motion shall be filed on or before March 9, 2012;
- (iii) Defendant's Reply shall be filed on or before March 23, 2012; and
- (iv) The Case Management Conference shall be held on April 6, 2012, with the parties to file one Joint Case Management Conference Statement seven days prior to the conference. Defendants shall notice the hearing of its responsive motion for the same date.

It is further stipulated that in the event that the Defendant should agree or be ordered to answer, move, or otherwise respond to a complaint in any subsequently filed case based on the same allegations as those made by Plaintiffs in the Complaint prior to the Response Date, then the Defendant shall respond to the Complaint on that same, earlier date.

IT IS SO STIPULATED.

Respectfully submitted,

KIRKLAND & ELLIS LLP

DATED: December 16, 2011

By: /s/ Elizabeth L. Deeley

Elizabeth L. Deeley

Attorneys for Defendant
ZONEPERFECT NUTRITION COMPANY

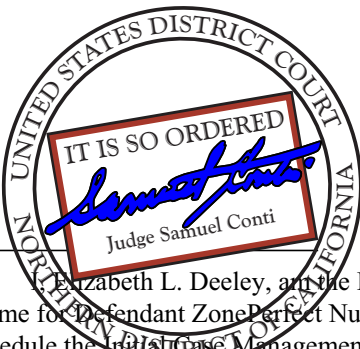
LAW OFFICE OF JANET LINDNER SPIELBERG

DATED: December 16, 2011

By: /s/ Janet Lindner Spielberg

Janet Lindner Spielberg¹

Attorneys for Plaintiffs
JAMES COLUCCI and KIMBERLY S.
SETHAVANISH



¹ Elizabeth L. Deeley, and the ECF user whose ID and password are being used to file this Stipulation to Extend the Time for Defendant ZonePerfect Nutrition Company to Answer, Move, or Otherwise Respond to the Complaint and Reschedule the Initial Case Management Conference. In compliance with General Order 45, X.B., I hereby attest that the following attorneys have concurred in this filing: Janet Lindner Spielberg, counsel for Plaintiffs, James Colucci and Kimberley S. Sethavanish.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: December ___, 2011

The Honorable Samuel Conti

CERTIFICATE OF SERVICE

The undersigned hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the attached **STIPULATION TO EXTEND THE TIME FOR DEFENDANT ZONEPERFECT NUTRITION COMPANY TO ANSWER, MOVE, OR OTHERWISE RESPOND TO THE COMPLAINT AND RESCHEDULE INITIAL CASE MANAGEMENT CONFERENCE** via the CM/ECF system on December 16, 2011.

DATED: December 16, 2011

By: /s/ Elizabeth L. Deeley
Elizabeth Deeley